

# EXHIBIT O

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

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5 SECURITIES INVESTOR PROTECTION CORPORATION,

6 Plaintiff,

7 v.

8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, et al.,

9 Defendants.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 August 22, 2017

17 2:01 AM

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21 B E F O R E :

22 HON STUART M. BERNSTEIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: J. PEREYRA

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<p>1 The deadline had not run.</p> <p>2 MS. FEIN: Where discovery had not run, yeah, and</p> <p>3 that was decided at a later hearing in terms of making sure</p> <p>4 that the cases for discovery had run as of July 7th couldn't</p> <p>5 come in because in those cases discovery had closed. And</p> <p>6 indeed, of the 36 adversary proceedings that are seeking to</p> <p>7 join here, 28 of them discovery has closed as of when the</p> <p>8 date that she requested those cases be added, which was</p> <p>9 August 10.</p> <p>10 But for that procedure we noticed every good faith</p> <p>11 case, including all the cases, the 36 cases here and asked -</p> <p>12 - they were all permitted to participate. These cases did</p> <p>13 not say they wanted to participate. We had a deadline of</p> <p>14 August 5th 2016 where if you did not say by August 5th 2016</p> <p>15 you wanted to participate, you were not included in the</p> <p>16 deposition. And that's been the procedure and that's why I</p> <p>17 know Ms. Chaitman referenced our Exhibit A. That's what</p> <p>18 Exhibit A is, that the participating customers, those</p> <p>19 customers that came forward and said they wanted to</p> <p>20 participate in the deposition, Exhibit A, the December 29th</p> <p>21 order, and I have a copy of it too.</p> <p>22 But something else that you said at the July 20th</p> <p>23 hearing, I just wanted to reference really quick, and I have</p> <p>24 a copy if you want to see it, but it goes to this issue of</p> <p>25 when Mr. Madoff has said things since and whether that's the</p>	<p>1 (indiscernible) seeks to add, it'll run out by the end of</p> <p>2 the year, but --</p> <p>3 THE COURT: So there are some cases where</p> <p>4 discovery hasn't run its course.</p> <p>5 MS. FEIN: There are some cases where discovery</p> <p>6 hasn't run out and in those cases it's really an issue that</p> <p>7 the September 29th order was very clear that if you did not</p> <p>8 participate, you did not request to participate, you are not</p> <p>9 participating in the Madoff deposition.</p> <p>10 THE COURT: That's day one and then there was a</p> <p>11 subsequent cut if you wanted to participate in day 2.</p> <p>12 MS. FEIN: Yes, and day 2 was limited to just</p> <p>13 those participants that participated in day 1. So, the</p> <p>14 universe of participants for day 2 was whoever participated</p> <p>15 in day 1, because that was the list of parties who noticed</p> <p>16 the deposition.</p> <p>17 And in terms of topics, topics were open. In</p> <p>18 terms of, you know, was there an issue that there were</p> <p>19 legitimate purchases after 1992, you raised that issue at</p> <p>20 the August 24th hearing which preceded the order being</p> <p>21 entered. You said, "Yes, it's going to be an issue that I</p> <p>22 can redo the language. Yes, it's going to be an issue, the</p> <p>23 strike date of the fraud. It's also going to be an issue</p> <p>24 were there legitimate trades after that start date and were</p> <p>25 those trades allocated to customer accounts."</p>
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<p>1 cause for their discovery, because really for these cases</p> <p>2 she's requesting additional discovery for these cases and --</p> <p>3 so it's page 26, line 16 you said, "You waited...", this is</p> <p>4 last year, so July 20th 2016. "You waited until the end of</p> <p>5 discovery to take Mr. Madoff's deposition, so even if he</p> <p>6 wasn't in prison and you waited too long, then you said,</p> <p>7 'Oh, now I need an extension of discovery because they took</p> <p>8 his deposition August 30th and he told us all these things.</p> <p>9 I wouldn't extend discovery for that.'"</p> <p>10 And these are cases where discovery has closed in</p> <p>11 the vast majority of them. In the cases where it's been</p> <p>12 left open, they chose not to participate in Mr. Madoff's</p> <p>13 deposition.</p> <p>14 THE COURT: Under the September 2016 order, did</p> <p>15 discovery continue to run in the cases that weren't part of</p> <p>16 the participating customers?</p> <p>17 MS. FEIN: It only addresses the participating</p> <p>18 customers, so it does not extend discovery for any other</p> <p>19 case.</p> <p>20 THE COURT: So, discovery has run out.</p> <p>21 MS. FEIN: That's right.</p> <p>22 THE COURT: Okay.</p> <p>23 MS. FEIN: For 28 of the 36 cases it's already</p> <p>24 run. It's scheduled to run out by the end of the year for</p> <p>25 all 36 cases -- of the cases that she seeks to add and Ms.</p>	<p>1 THE COURT: I said that?</p> <p>2 MS. FEIN: Yeah. It's -- I have the cite for you.</p> <p>3 I can hand you the transcript too. So, it's page --</p> <p>4 THE COURT: Okay, I understand. Ms. Chaitman is</p> <p>5 saying look, you know, basically I've been sandbagged. You</p> <p>6 took the position that securities were never used or</p> <p>7 customer funds were never used to purchase securities,</p> <p>8 forget about the allocation issue for a moment. And now</p> <p>9 Madoff testifies that that's precisely what was done.</p> <p>10 MS. FEIN: So, I think, and I wish we'd brought</p> <p>11 the testimony with us, I don't think the testimony really --</p> <p>12 if that's the argument, I don't think the testimony says</p> <p>13 that.</p> <p>14 THE COURT: That's the problem I'm having with</p> <p>15 this whole thing. You're referring to testimony, Ms.</p> <p>16 Chaitman and she's referring to testimony.</p> <p>17 MS. CHAITMAN: Let's adjourn this and let me</p> <p>18 submit the testimony.</p> <p>19 THE COURT: Why don't we do this, if you want --</p> <p>20 as far as I'm concerned under the existing orders, only the</p> <p>21 original -- starting with the original participating</p> <p>22 customers, that was the universe that could participate in</p> <p>23 day 1. Discovery continued to run as to everybody else and</p> <p>24 then there was as further cut for day 2 when you had to opt</p> <p>25 in.</p>